

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

QUINN AARON KLEIN,	)	
	)	
Plaintiff,	)	
vs.	)	Case. No. CIV-09-1363-HE
	)	
ROBERT KING, et al.,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff, a state prisoner appearing *pro se*, has filed this action pursuant to 42 U.S.C. § 1983. Plaintiff has also applied for leave to proceed *in forma pauperis* and requested the appointment of counsel [Doc. Nos. 2 & 3]. Consistent with 28 U.S.C. § 626(1)(B), the motion was referred for initial proceedings to Magistrate Judge Gary M. Purcell, who issued a Report and Recommendation recommending that the action be dismissed for improper venue and that the motions be denied without prejudice.

In his complaint, the plaintiff asserts claims based on the conditions of his confinement at Davis Correctional Facility (“DCF”) where he was previously incarcerated. Because all of the defendants in the action reside in the Eastern District of Oklahoma and all of the events forming the basis of the action occurred there, the Magistrate Judge concluded that venue under 28 U.S.C. § 1391(b) is not proper here in the Western District.


Plaintiff has not filed a timely objection to the Report and Recommendation, thus waiving appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). Plaintiff has, however, filed a motion for change of venue. “In the interest

of justice,” the court may “transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The Magistrate Judge concluded that the “interest of justice” would not be furthered by transfer of this action because the plaintiff has paid no filing fee, nor would he otherwise be prejudiced by dismissal.

For substantially the same reasons as stated by the Magistrate Judge, the court concludes venue is improper and, under the circumstances here, transfer would not further the “interest of justice.” Accordingly, the Court **ADOPTS** the Report and Recommendation; **DISMISSES** plaintiff’s action without prejudice to its filing in a proper district; and **DENIES** plaintiff’s motions to proceed *in forma pauperis* [Doc. No. 2], for appointment of counsel [Doc. No. 3], and to transfer [Doc. No. 7] without prejudice to their renewal in a properly filed action.

**IT IS SO ORDERED.**

Dated this 28th day of January, 2010.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE